ASSEMBLY BILL   No. 1640

Introduced by Assembly Member Mark Stone

January 7, 2016

An act to amend Section 7522.02 of the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as introduced, Mark Stone. Retirement: public employees.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA exempts from its provisions certain public employees whose collective bargaining rights are subject to specified provisions of federal law until a specified federal district court decision on a certification by the United States Secretary of Labor, or until January 1, 2016, whichever is sooner.

This bill would extend indefinitely that exemption for those public employees, whose collective bargaining rights are subject to specified provisions of federal law and who became a member of a state or local public retirement system prior to December 30, 2014.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1   SECTION 1.   Section 7522.02 of the Government Code is
2 amended to read:
3   7522.02. (a) (1) Notwithstanding any other law, except as
4 provided in this article, on and after January 1, 2013, this article
5 shall apply to all state and local public retirement systems and to
6 their participating employers, including the Public Employees'
7 Retirement System, the State Teachers' Retirement System, the
8 Legislators' Retirement System, the Judges' Retirement System,
9 the Judges' Retirement System II, county and district retirement
10 systems created pursuant to the County Employees Retirement
11 Law of 1937 (Chapter 3 (commencing with Section 31450) of Part
12 3 of Division 4 of Title 3), independent public retirement systems,
13 and to individual retirement plans offered by public employers.
14 However, this article shall be subject to the Internal Revenue Code
15 and Section 17 of Article XVI of the California Constitution. The
16 administration of the requirements of this article shall comply with
17 applicable provisions of the Internal Revenue Code and the
18 Revenue and Taxation Code.
19   (2) Notwithstanding paragraph (1), this article shall not apply
20 to the entities described in Section 9 of Article IX of, and Sections
21 4 and 5 of Article XI of, the California Constitution, except to the
22 extent that these entities continue to be participating employers in
23 any retirement system governed by state statute. Accordingly, any
24 retirement plan approved before January 1, 2013, by the voters of
25 any entity excluded from coverage by this section shall not be
26 affected by this article.
27   (3) (A) Notwithstanding paragraph (1), this article shall not
28 apply to a public employee whose interests are protected under
29 Section 5333(b) of Title 49 of the United States Code until a federal
30 district court rules that the United States Secretary of Labor, or
31 his or her designee, erred in determining that the application of
32 this article precludes certification under that section, or until
33 January 1, 2016, whichever is sooner. *and who became a member*
34 *of a state or local public retirement system prior to December 30,*
35 *2014.*
36   (B) If a federal district court upholds the determination of the
37 United States Secretary of Labor, or his or her designee, that
38 application of this article precludes him or her from providing a

1 ~~certification under Section 5333(b) of Title 49 of the United States~~
2 ~~Code, this article shall not apply to a public employee specified~~
3 ~~in subparagraph (A).~~
4   (4) Notwithstanding paragraph (1), this article shall not apply
5 to a multiemployer plan authorized by Section 302(c)(5) of the
6 federal Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
7 employer began participation in that plan prior to January 1, 2013,
8 and the plan is regulated by the federal Employee Retirement
9 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).
10   (b) The benefit plan required by this article shall apply to public
11 employees who are new members as defined in Section 7522.04.
12   (c) (1) Individuals who were employed by any public employer
13 before January 1, 2013, and who became employed by a subsequent
14 public employer for the first time on or after January 1, 2013, shall
15 be subject to the retirement plan that would have been available
16 to employees of the subsequent employer who were first employed
17 by the subsequent employer on or before December 31, 2012, if
18 the individual was subject to concurrent membership for which
19 creditable service was performed in the previous six months or
20 reciprocity established under any of the following provisions:
21   (A) Article 5 (commencing with Section 20350) of Chapter 3
22 of Part 3 of Division 5 of Title 2.
23   (B) Chapter 3 (commencing with Section 31450) of Part 3 of
24 Division 4 of Title 3.
25   (C) Any agreement between public retirement systems to provide
26 reciprocity to members of the systems.
27   (D) Section 22115.2 of the Education Code.
28   (2) An individual who was employed before January 1, 2013,
29 and who, without a separation from employment, changed
30 employment positions and became subject to a different defined
31 benefit plan in a different public retirement system offered by his
32 or her employer shall be subject to that defined benefit plan as it
33 would have been available to employees who were first employed
34 on or before December 31, 2012.
35   (d) If a public employer, before January 1, 2013, offers a defined
36 benefit pension plan that provides a defined benefit formula with
37 a lower benefit factor at normal retirement age and results in a
38 lower normal cost than the defined benefit formula required by
39 this article, that employer may continue to offer that defined benefit
40 formula instead of the defined benefit formula required by this

1 article, and shall not be subject to the requirements of Section
2 7522.10 for pensionable compensation subject to that formula.
3 However, if the employer adopts a new defined benefit formula
4 on or after January 1, 2013, that formula must conform to the
5 requirements of this article or must be determined and certified by
6 the retirement system's chief actuary and the retirement board to
7 have no greater risk and no greater cost to the employer than the
8 defined benefit formula required by this article and must be
9 approved by the Legislature. New members of the defined benefit
10 plan may only participate in the lower cost defined benefit formula
11 that was in place before January 1, 2013, or a defined benefit
12 formula that conforms to the requirements of this article or is
13 approved by the Legislature as provided in this subdivision.
14   (e) If a public employer, before January 1, 2013, offers a
15 retirement benefit plan that consists solely of a defined contribution
16 plan, that employer may continue to offer that plan instead of the
17 defined benefit pension plan required by this article. However, if
18 the employer adopts a new defined benefit pension plan or defined
19 benefit formula on or after January 1, 2013, that plan or formula
20 must conform to the requirements of this article or must be
21 determined and certified by the retirement system's chief actuary
22 and the system's board to have no greater risk and no greater cost
23 to the employer than the defined benefit formula required by this
24 article and must be approved by the Legislature. New members of
25 the employer's plan may only participate in the defined
26 contribution plan that was in place before January 1, 2013, or a
27 defined contribution plan or defined benefit formula that conforms
28 to the requirements of this article. This subdivision shall not be
29 construed to prohibit an employer from offering a defined
30 contribution plan on or after January 1, 2013, either with or without
31 a defined benefit plan, whether or not the employer offered a
32 defined contribution plan prior to that date.
33   (f) (1) If, on or after January 1, 2013, the Cities of Brea and
34 Fullerton form a joint powers authority pursuant to the provisions
35 of the Joint Exercise of Powers Act (Article 1 (commencing with
36 Section 6500) of Chapter 5), that joint powers authority may
37 provide employees the defined benefit plan or formula that those
38 employees received from their respective employers prior to the
39 exercise of a common power, to which the employee is associated,
40 by the joint powers authority to any employee of the City of Brea,

1 the City of Fullerton, or a city described in paragraph (2) who is
2 not a new member and subsequently is employed by the joint
3 powers authority within 180 days of the city providing for the
4 exercise of a common power, to which the employee was
5 associated, by the joint powers authority.
6   (2) On or before January 1, 2017, a city in Orange County that
7 is contiguous to the City of Brea or the City of Fullerton may join
8 the joint powers authority described in paragraph (1) but not more
9 than three cities shall be permitted to join.
10   (3) The formation of a joint powers authority on or after January
11 1, 2013, shall not act in a manner as to exempt a new employee
12 or a new member, as defined by Section 7522.04, from the
13 requirements of this article. New members may only participate
14 in a defined benefit plan or formula that conforms to the
15 requirements of this article.
16   (g) The Judges' Retirement System and the Judges' Retirement
17 System II shall not be required to adopt the defined benefit formula
18 required by Section 7522.20 or 7522.25 or the compensation
19 limitations defined in Section 7522.10.
20   (h) This article shall not be construed to provide membership
21 in any public retirement system for an individual who would not
22 otherwise be eligible for membership under that system's
23 applicable rules or laws.
24   (i) On and after January 1, 2013, each public retirement system
25 shall modify its plan or plans to comply with the requirements of
26 this article and may adopt regulations or resolutions for this
27 purpose.

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